

**STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
HEARING ON
“IMPLEMENTATION OF THE PIPELINE INSPECTION, PROTECTION, ENFORCEMENT, AND
SAFETY ACT OF 2006”
JUNE 25, 2008**

Committee consideration of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (“PIPES Act”) came on the heels of some serious pipeline incidents in Prudhoe Bay, Alaska and in my district in Little Falls, Minnesota, where over 160,000 gallons of oil was spilled. Thankfully, there were no fatalities or injuries, but there was significant environmental damage. A driver had first spotted the rupture at 9:21 p.m. and reported that the oil was shooting 60 feet in the air, covering the tops of trees. The pipeline controller, which was about an hour away from the manual shut-off valves, with the permission of Koch Pipeline Company, had instructed a deputy in the local sheriff’s office on how to shut the valves to prevent further spillage. Thankfully, their quick actions prevented what could have been a major catastrophe.

These events and others helped shape our work to reauthorize the pipeline safety program. It was a long process. There were some intense negotiations, but we were able to work through the issues and put together a good, bipartisan, pro-safety bill.

We required each gas and hazardous liquid pipeline operator to develop and implement a human factors management plan, which must include a maximum limit on hours of service for pipeline controllers and other measures to reduce risks associated with human factors. The plan must be submitted to the Secretary of Transportation for review and approval.

We required operators of natural gas distribution pipelines to implement a pipeline integrity management program with the same or similar integrity management elements as the hazardous liquid and natural gas transmission pipelines. Distribution pipelines make up 1.8 million miles of the 2.2 million miles of pipelines in the United States. They distribute gas to local towns, businesses, and homes, and are responsible for the majority of pipeline deaths and injuries.

We required gas pipeline operators to install excess flow valves on all new and replaced single-family residence lines, as the National Transportation Safety Board (“NTSB”) recommended in its Most Wanted List. We required the Pipeline and Hazardous Materials Safety Administration and pipeline operators to implement a number of other NTSB recommendations issued in recent reports.

We ensured that low-stress hazardous liquid pipelines will be subject to the same standards and regulations as other hazardous liquid pipelines. Under the prior law, there was an exemption from regulation for low-stress pipelines. The PIPES Act regulates them (with a few minor exceptions) and ensures that these pipelines will have to be cleaned, inspected, and repaired at specified intervals.

We increased the number of Federal pipeline safety inspectors at the Department of Transportation from 90 to 100 in 2007, 111 in fiscal year 2008, 123 in fiscal year 2009, and 135 in fiscal year 2010 – a 50 percent increase in inspectors by 2010.

We required the Secretary to provide to the public a monthly update of all gas and hazardous liquid enforcement actions taken by the Secretary, and include in each update identification of the

operator involved in the enforcement activity, the type of alleged violation, the penalty or penalties proposed, any changes in case status since the previous summary, the final assessment amount of each penalty, and the reasons for a reduction in the proposed penalty, if appropriate.

And, on the security side, we required the Inspector General of the Department of Transportation to conduct an assessment of the actions taken to implement the annex to the memorandum of understanding between the Department of Transportation and the Department of Homeland Security relating to pipeline security.

It has been more than 18 months since enactment of the PIPES Act, and while the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) has made some progress on implementing the law, some statutory mandates are past due. Section 9 of the Act, for example, required the Secretary to issue a final rule by December 31, 2007 that prescribed minimum standards for integrity management programs for distribution pipelines and required operators of natural gas distribution systems to install excess flow valves on single family residence service lines in certain circumstances. PHMSA didn’t issue a Notice of Proposed Rulemaking (“NPRM”) on the mandate until late last Friday.

Section 4 of the Act required PHMSA to issue a final rule by December 31, 2007 that subjected low-stress hazardous liquid pipelines to the same standards and regulations as other hazardous liquid pipelines. Contrary to Congressional intent, PHMSA decided to pursue a two-phased approach to meet the mandate: regulate rural low-stress hazardous liquid pipelines affecting Unusually Sensitive Areas (“USAs”) in an initial rulemaking process and use that rulemaking process to collect data PHMSA claims they need before they issue an NPRM (known as Phase II) pertaining

to rural low-stress hazardous liquid pipelines outside USAs. The Final Rule covering low-stress hazardous liquid pipelines affecting USAs was not issued until June 3, 2008. A date for issuance of an NPRM on Phase II is unknown.

Section 19 of the Act required PHMSA to issue a final rule by December 31, 2007 to implement all the recommendations contained in the NTSB's November 2005 report entitled "Supervisory Control and Data Acquisition (SCADA) in Liquid Pipelines." The report calls for (1) implementation of the American Petroleum Institute's Recommended Practice 165 for the use of graphics on supervisory control and data acquisition screens; (2) implementation of a standard for pipeline companies to review and audit alarms on monitoring equipment; and (3) implementation of standards for pipeline controller training that include simulator or noncomputerized simulations for controller recognition of abnormal pipeline operating conditions, in particular, leak events. PHMSA has failed to issue even an NPRM, much less a final rule, on these important NTSB recommendations. This section and section 12 of the Act were two of my main priorities for the pipeline safety reauthorization bill.

Section 12 of the Act addresses an issue that has remained on the NTSB's Most Wanted List of Safety Improvements for almost a decade: fatigue. In 1999, the NTSB conducted a comprehensive review of all transportation accidents reported to the U.S. Department of Transportation modal administrations over a 10-year period. As a result of that review, the NTSB issued a recommendation to the Office of Pipeline Safety (now PHMSA) to establish within two years scientifically based hours-of-service regulations, which set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human sleep and rest requirements.

PHMSA failed to implement that recommendation, so when we began work on the pipeline safety reauthorization bill, I insisted that this issue be addressed and it was addressed. Section 12 of the Act directs PHMSA to issue a final rule by June 1, 2008 that requires operators of gas and hazardous liquid pipelines to develop, implement, and submit to the Secretary (for approval) a human factors management plan designed to reduce risks associated with human factors, including fatigue, in each control center for the pipeline. Each of those plans must include a maximum limit on the hours of service for individuals employed as controllers in a control center for the pipeline.

To my dismay, the June 1 deadline for issuing this important rule has come and gone. This concerns me. The NTSB has noted in many of its accident investigation reports that fatigue is difficult to detect, particularly when the victims are deceased. The NTSB reviews the statements of other workers and witnesses, the hours worked and slept in the days leading up to the accident, and the time at which the accident occurred, but there is no chemical test for identifying the presence of fatigue as there is for identifying the presence of drugs or alcohol; hence, I believe – and I believe the NTSB would agree – that fatigue is a factor in far more accidents than has been reported.

We are 18 months into the reauthorization bill. There's another six months left in this Administration, and there will be a transition time with a new Administration. I have concerns about this rule getting done. I'd like to get a sense from you, Mr. Johnson, today about when you think we will see something on this issue from your agency and on the other overdue statutory mandates contained in the bill.

